IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN ITS CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7517 OF 2004

Pandharinath Kaliram Sankhe ...Petitioner (Applicant)

vs.

State of Maharashtra ...Respondents.

Mr.R. Soni i/b. Rane & Co. for Petitioner.

Mr.V.P.Malvankar, Addl.G.P. for State-Respondents.

CORAM: A.P.SHAH & S.U.KAMDAR, JJ.

DATED: 16th September,2004

ORAL JUDGEMENT (PER S.U.KAMDAR,J.)

1. In the present Petition, the Petitioner is challenging the order passed by the Maharashtra Administrative Tribunal dated 23rd September,2003 in O.A.NO.300 of 2003. The relevant facts of the case are as under:-

2. On 5th February,1970, the Petitioner joined the services as Godown Keeper in the Revenue Department of State Government. He was promoted to the post of Awal Karkoon in the year 1980.

Petitioner was once again promoted in the year 1994 to the post of Naib Tahasildar and has superannuated from the said post with effect from January,2004.

3. Sometime in or about 10th October,1975 the Petitioner when still in employment, made an application to the Collector, District Thane, requesting for change of his birth date from 24.1.1946 to 2.12.1949 in his service record. The petitioner thereafter, forwarded three reminders dated 3.3.1976, 20.7.1977 and 13.3.1981.

4. On 7.2.2001, the petitioner made an application to Mamlatdar, Palghar Taluka, District Thane to verify his birth record during the period 1948 to 1950 and sought an extract of birth certificate indicating his correct date of birth. Subsequently, the Petitioner has been issued the extract of birth record in the form of birth certificate from the office of Tahasildar certifying the date of birth of the petitioner as 2.12.1949. On 9.2.2001, the Petitioner requested the Second Respondent- Commissioner to take note of his birth date as 2.12.1949 in place of original birth date of 24.1.1946 as existing on record. On 26.4.2001

the Tahasildar forwarded the application of the petitioner to the Commissioner for

necessary decision in that behalf. On 6.6.2001, the Commissioner, Konkan Division, directed the Tahasildar to forward the said application alongwith his recommendation directly to the Collector, Sindhudurg, alongwith the service book for necessary action. On 29.6.2001, accordingly Tahasildar forwarded the said proposal to the Collector, Sindhudurg with a request to effect change in the birth date of the petitioner herein. On 8.10.2001, the Collector and District Election Officer, Mumbai suburban District also forwarded proposal for change of birth date to the Commissioner, Konkan Division as per the request of the Petitioner.

5. On 9th July,2002, the Commissioner, Konkan Division, communicated to the Collector, the decision of the Government, rejecting the proposal of the Petitioner for effecting change in birth date. On 17.3.2003, the Petitioner filed an appeal before Maharashtra Administrative Tribunal being O.A no.300 of 2003 and challenged the validity of said communication dated 9.7.2002 rejecting his request for change in birth date. By the impugned order date

23.9.2003, Maharashtra Administrative Tribunal after considering the case in depth has come

to the conclusion that the Petitioner’s case do not have any merit and therefore rejected the same.

6. The learned Counsel for the petitioner, before us has urged that the order passed by Maharasthra Administrative Tribunal is illegal and requires to be interfered by this Court in its writ jurisdiction under Article 226 of Constitution of India. He further contended that findings of the Tribunal that the petitioner should have applied for change in birth date within the period of five years from the date of his entering the services, in accordance with G.R. issued by the State Government, is erroneous because in fact he did make such application on 10.10.1975 itself. He further contended that the record indicates that there is an error in recording the birth date of the petitioner and therefore, the same requires correction.

7. We heard the learned Counsel for the Petitioner. We are not inclined to interfere with the order passed by Maharashtra Administrative

Tribunal. Firstly, the order passed by Maharashtra Administrative Tribunal is passed after considering the legal as well as factual aspects of the matter. In any event it is a plausible view,

and therefore, we are not inclined to exercise our writ jurisdiction under Article 226 of Constitution of India. Secondly, the contention of the learned Counsel that he made an application within a period of five years of his entering into service, is required to be rejected for simple reason that though he forwarded the application in the year 1975, he never bother to follow up the same. The last letter of so called reminder has been sent in the year 1981. Thereafter, the petitioner has not bothered to take any further steps and abandoned the said application. He suddenly in February,2001 for the first time applied for extract of birth record from Tahasildar, and thereafter made a fresh application for alteration of birth date in the service record. In the aforesaid facts and circumstances, we are not impressed with the arguments of Learned Counsel for the Petitioner that the Tribunal was wrong or unjustified in holding that the petitioner did not make necessary application for correction of birth date within the period of five years from entering in

the service. Thirdly, even so called record produced by the Petitioner before us does not inspire confidence. One of the letter which has been produced indicates that sister of the petitioner was born on 29.5.1949 whereas the birth of the petitioner

is claimed on 2.12.1949. It is very surprising that the petitioner can be born within the period of seven months from the birth of his sister. Fourthly, learned Tribunal has also considered various judgements of Supreme Court under which it is observed that the practice must be discouraged of applying for rectification of birth date at the fag end of the career so as to get additional benefit of service. We are in total agreement with the view expressed by the Tribunal on the aforesaid aspect of the matter and thus, we do not see any reason to entertain the present petition. Accordingly, we dismissed the petition. However, there shall be no order as to costs.

(A.P.Shah, J.)

16.9.2004. (S.U.Kamdar, J)